

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Clarence Johnson,

Case No. 17-cv-0347 (WMW/BRT)

Plaintiff,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION AS MODIFIED**

Minnesota Department of Labor &
Industry,

Defendant.

This matter is before the Court on the June 14, 2017 Report and Recommendation (R&R) of United States Magistrate Judge Becky R. Thorson. (Dkt. 27.) The R&R recommends granting the motion to dismiss filed by Defendant Minnesota Department of Labor & Industry, (Dkt. 18), for three reasons: (1) Plaintiff Clarence Johnson fails to establish subject-matter jurisdiction, (2) Johnson's complaint fails to state a claim on which relief can be granted, and (3) Johnson's complaint is barred by sovereign immunity. No objections to the R&R were filed in the time period permitted.¹

In the absence of timely objections, this Court reviews an R&R for clear error. *See* Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on

¹ On June 19, 2017, the Court received a letter from Johnson dated June 14, 2017. (Dkt. 29.) Because it appears Johnson signed this letter on the same date the R&R issued and the letter does not address the content of the R&R, Johnson's letter is not construed as an objection to the R&R.

the face of the record in order to accept the recommendation.”); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam).

Having reviewed the R&R, the Court concludes that Johnson’s complaint should be dismissed for lack of subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1). *See Osborn v. United States*, 918 F.2d 724, 730 (8th Cir. 1990) (explaining that plaintiff bears the burden of proving basis of federal jurisdiction). Because Johnson fails to establish the basis for federal jurisdiction, the Court declines to adopt the R&R’s alternative recommendations to grant Defendant’s motion to dismiss Johnson’s claims on the merits. *See Godfrey v. Pulitzer Publ’g Co.*, 161 F.3d 1137, 1141 (8th Cir. 1998) (explaining that federal jurisdiction is a threshold issue).

ORDER

Based on the R&R and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. The June 14, 2017 R&R, (Dkt. 27), is **ADOPTED AS MODIFIED**;
2. Defendant Minnesota Department of Labor & Industry’s motion to dismiss, (Dkt. 18), is **GRANTED** to the extent it asserts the lack of federal jurisdiction; and
3. Plaintiff Clarence Johnson’s complaint, (Dkt. 1), is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 22, 2017

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge